

Memorandum



Date: October 2, 2007

To: Honorable Chairman Bruno A. Barreiro and
Members, Board of County Commissioners

Agenda Item No. 9(A)(10)(A)

From: George M. Burgess
County Manager

A handwritten signature in dark ink, appearing to read "Burgess", written over the printed name of George M. Burgess.

Subject: Resolution Authorizing Agreement with the State to Receive and Expend HAVA Funds
for Optical Scan and Ballot-On-Demand Voting Equipment

Recommendation

It is recommended that the Board approve the attached resolution authorizing the County Mayor or his designee to execute two Memorandums of Agreement with the state to receive and expend Help America Vote Act (HAVA) funds in the amount of \$5,011,327.56 for optical scan and ballot-on-demand voting equipment and to receive and expend additional future funds should they become available under this program for this purpose.

Scope

The scope of this resolution is countywide in nature. Optical scan and ballot-on-demand voting equipment will be utilized for all elections held in Miami-Dade County as of the August 26, 2008 Primary Election.

Fiscal Impact

Miami-Dade County will receive a grant in the amount of \$5,011,327.56 from the State of Florida for the purchase of voting equipment. This will not fund the entire cost of the conversion. The County will be required to purchase additional equipment, voting booths, paper ballots, and other supplies. As previously reported, the fiscal impact to the County is anticipated to be between \$6 and \$7.5 million for the initial cost of implementation. However, the cost to conduct elections is expected to be reduced; therefore, long term savings will offset the cost of the conversion.

Track Record/Monitor

The Supervisor of Elections will be responsible for adhering to the requirements set forth in the Memorandums of Agreement and monitoring the purchase of optical scan and ballot-on-demand equipment.

Background

On May 21, 2007, Governor Crist signed House Bill 537 into state law. This bill included many revisions to state elections laws; of most significance is the mandate that all voting in the State of Florida shall be by optical scan voting which results in a paper record.

House Bill 537 allocated \$5,011,327.56 from HAVA funds to purchase optical scan units and ballot-on-demand technology. As a condition of accepting this grant from the state, the County was required to execute the State "County Certification Form," which was adopted by the Board on June 26, 2007 via Resolution No. 748-07 and was immediately executed.

Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners
Page 2

As a result of opting into the state funding formula via the State "County Certification Form", the state issued two Memorandums of Agreement outlining the compliance requirements. One Memorandum of Agreement relates to funds in the amount of \$4,504,500 for the purchase of optical scan voting equipment for Election Day (Attachment 1) and the other Memorandum of Agreement relates to funds in the amount of \$506,827.56 for the purchase of ballot-on-demand equipment and optical scan tabulators for Early Voting (Attachment 2). Compliance requirements applicable to both agreements are as follows:

- Funds must be expended solely to purchase 1) optical scan voting equipment and 2) ballot-on-demand and optical scan voting equipment, respectively.
- The Supervisor of Elections shall not receive funds until ED Form GCAS-009 entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions" is completed and submitted for each Memorandum of Agreement.
- The Supervisor of Elections must segregate state distributions for 1) optical scan voting equipment and 2) ballot-on-demand and optical scan voting equipment, respectively in separate accounts established to hold only such funds. The accounts established for these funds must be interest bearing accounts. Any funds remaining in the accounts at the end of the fiscal year shall remain in the accounts to be used for the same purposes for subsequent years or until such funds are expended.
- The Supervisor of Elections shall maintain separate accounting records for this funding.
- The Supervisor of Elections shall provide a written report on or before December 31st for each year funds are expended.


Assistant County Manager

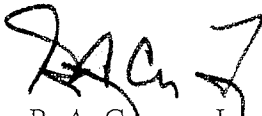


MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: October 2, 2007

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 9(A)(10)(A)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(10)(A)
10-02-07

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY
MAYOR OR HIS DESIGNEE TO EXECUTE TWO
MEMORANDUMS OF AGREEMENT WITH THE
STATE TO RECEIVE AND EXPEND HAVA
FUNDS IN THE AMOUNT OF \$5,011,327.56 FOR
OPTICAL SCAN AND BALLOT-ON-DEMAND
VOTING EQUIPMENT AND TO RECEIVE AND
EXPEND ADDITIONAL FUTURE FUNDS
SHOULD THEY BECOME AVAILABLE UNDER
THIS PROGRAM FOR THIS PURPOSE

WHEREAS, Miami-Dade County will utilize optical scan and ballot-on-demand
equipment as of the August 26, 2008 Primary Election; and

WHEREAS, the Board executed the County Certification Form on June 26, 2007 via
Resolution No. 748-07 opting into the state funding formula; and

WHEREAS, the submittal of the County Certification Form to the state precipitated
two Memorandums of Agreement requiring execution in order to receive and expend
\$5,011,327.56 for optical scan voting equipment and ballot-on-demand technology; and

WHEREAS, this Board desires to accomplish the purposes outlined in the
accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board authorizes the
County Mayor or his designee to execute two Memorandums of Agreement with the state to
receive and expend HAVA funds in the amount of \$5,011,327.56 for optical scan and ballot-
on-demand voting equipment and to receive and expend additional future funds should they
become available under this program for this purpose.

4

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

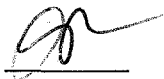
The Chairperson thereupon declared the resolution duly passed and adopted this
2nd day of October, 2007. This resolution shall become effective ten (10) days after the
date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective
only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Oren Rosenthal

**FLORIDA DEPARTMENT of STATE**

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

MEMORANDUM

TO: Supervisors of Elections

FROM: Amy K. Tuck
Director, Division of Elections

DATE: August 14, 2007

SUBJECT: HAVA Funds for Optical Scan Voting Equipment

The 2007 Legislature appropriated funds to be distributed to counties listed in Section 11(a) of Chapter 2007-30, Laws of Florida, to assist with purchasing optical scan voting systems equipment.

Funds received pursuant to this agreement must be used solely to purchase optical scan voting equipment. The upgrade to optical scan voting equipment must be completed no later than August 26, 2008.

Once you are in receipt of these funds, they must be deposited in an **interest bearing** account until they are disbursed. The county must segregate state distributions for optical scan voting equipment in a separate account established to hold only such funds. Any funds remaining in the fund at the end of the fiscal year shall remain in the account to be used for the same purposes in subsequent years or until such funds are expended. The county shall maintain separate accounting records for this funding.

Enclosed are the following documents:

- Memorandum of Agreement for HAVA Funds for Optical Scan Voting Equipment
- Attachment A, Compliance Requirements

Optical Scan Voting Equipment
August 14, 2007
Page 2

- Attachment A-1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
- Attachment B, Funding Per County

Please return the executed documents to the Division of Elections. You will be provided a copy of the agreement upon execution by the Division.

If you have any questions, please let us know.

AKT/BL/jd

Enclosures

cc: County Governing Authority

MEMORANDUM OF AGREEMENT
HAVA FUNDS FOR OPTICAL SCAN VOTING EQUIPMENT

This agreement, effective as of the date fully executed, is between the State of Florida, Department of State, Division of Elections ("Department"), an agency of the State of Florida, the address of which is the R.A. Gray Building, 500 South Bronough Street, Room 316, Tallahassee, FL 32399-0250 and County Supervisor of Elections, The Honorable Lester Sola ("Supervisor"), as authorized representative of Miami-Dade County, the address of which is 2700 NW 87th Avenue, Miami, Florida 33172. The agreement governs the receipt and use of federal funds as specified herein.

I. Governing Law

Section 11 of Chapter 2007-30, Laws of Florida, provides for the disbursement of funds to be used to purchase optical scan voting equipment. From the funds appropriated from the Grants and Donations Trust Fund to the Department of State, the Department is authorized to distribute funds in the state fiscal year 2007-2008 to the county supervisors of elections as listed in Section 11(a) of Chapter 2007-30, Laws of Florida, to assist with purchasing optical scan voting systems equipment. Funding to support the FY 2007-08 appropriation for purchasing optical scan voting systems equipment is made available through section 251 of the Help America Vote Act of 2002 (HAVA) and the Catalog of Federal Domestic Assistance (CFDA) 90.401, Help America Vote Act Requirements Payments.

II. Restrictions

Supervisor must comply with the requirements for federal and/or state resources as provided in **Attachment A** which is incorporated by reference as if fully set forth herein. However, this Agreement shall not be fully executed nor funds disbursed until the county supervisor of elections first satisfies the requirements of paragraph 3 of **Attachment A**. As referenced in Attachment A, all funds must be placed in an interest bearing account until disbursed.

No county supervisor of elections shall use any funds received hereunder to support state or federal lobbying activities but this does not affect the right, or that of any other organization to petition Congress, or any other level of Government, through the use of other resources.

Any funds received by the Supervisor under this Agreement that are used for any unauthorized purpose shall be repaid to the Department.

III. Disbursement

The Department shall distribute to each eligible county supervisor of elections a sum certain as outlined further in **Attachment B**.

IV. Monitoring, Reporting, and Audits

The administration of resources awarded to the Supervisor is subject to audits and/or monitoring by the Department of State as described in this section.

A. Monitoring and Reporting

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, and Section 215.97, F.S., (see Part B "Audits") monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Supervisor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department.

In the event the Department determines that a limited scope audit of the Supervisor is appropriate, the Supervisor agrees to comply with any additional instructions provided by Department staff to the Supervisor regarding such audit. The Supervisor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

Additionally, the Supervisor of Elections must comply with the reporting requirements of paragraph 6 in **Attachment A**. The Department shall closely monitor the Supervisors' annual expenditure reports to ensure that the Supervisors expend HAVA funds in accordance with approved plans and will require reimbursement for all expenditures not approved.

B. Audits

Part I: Federal Funds---This part is applicable if the Supervisor is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the Supervisor expends \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards in its fiscal year, the Supervisor must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. **Attachment A** indicates Federal resources awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Supervisor shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended shall be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Supervisor conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, shall meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the Supervisor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the Supervisor expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Supervisor expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Supervisor resources obtained from other than Federal entities).
4. Additional guidance to state and federal monitoring and auditing requirements may be found at <http://www.eac.gov>; and <http://election.dos.state.fl.us/hava/index.shtml>

Part II: State Funds—This part is applicable if the Supervisor is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the Supervisor expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such Supervisor (for fiscal years ending September 30, 2004 or thereafter), the Supervisor must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Attachment A indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the Supervisor shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1, the Supervisor shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the Supervisor expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the Supervisor expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Supervisor's resources obtained from other than State entities).

Part III: Other Audit Requirements--Pursuant to Section 215.97(8), Florida Statutes, the Department may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the Department must arrange for funding the full cost of such additional audits.

Part IV: Report Submission--

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Supervisor directly to each of the following:

*Department of State
Division of Elections
R.A. Gray Building
500 S. Bronough Street, Ste 316
Tallahassee, Florida 32399-0250*

*Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, Indiana 47132*

Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the Supervisor shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to the Department at the following address:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the Supervisor directly to each of the following:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

*Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450*

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the Supervisor directly to:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

5. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550

(local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Supervisors, when submitting financial reporting packages to the Department of State for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Supervisor in correspondence accompanying the reporting package.

Part V: Record Retention--The Supervisor shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date the audit report is issued, and shall allow the Department or its designee, CFO, or Auditor General access to such records upon request. The Supervisor shall ensure that audit working papers are made available to the Department or its designee, CFO, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

V. Entirety of the Agreement

All terms and conditions of this agreement are fully set forth in this document and shall be governed by the laws of the State of Florida regardless of any conflict of laws provisions. In any proceeding or action brought under this section, the parties agree that the prevailing party will be entitled to its reasonable attorney's fees from the other party. The parties agree that proper venue will be in Leon County, Florida.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

Supervisor of Elections, authorized
representative for Miami-Dade County

Department of State
Division of Elections:

By: _____

By: _____

Typed name and title

Typed name and title

Witness

Witness

Date

Date

ATTACHMENT A

Federal Program: Federal Help America Vote Act—Catalog of Federal Domestic Assistance (CFDA) § 90.401 Help America Vote Act Requirements Payments for the amount specified in Attachment B.

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

1. Funds received pursuant to this Agreement must be expended solely to purchase optical scan voting equipment. The three types of certified optical scan systems are by the following vendors: Diebold, Sequoia, and ES&S.
2. The upgrade to optical scan voting equipment must be completed no later than August 26, 2008.
3. No county supervisor of elections shall receive funds pursuant to this Agreement until he or she:
 - Completes and returns the required "County Certification (ss.10-11, Chapter 2007-30, Laws of Florida)" form.
 - Completes and submits ED Form GCAS-009 (6/88), entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions." Such form is attached hereto as **Attachment A-1**.
 - Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, prohibits the disbursement of federal funds to the intended recipient of such funds or to any sub-recipient thereunder unless such recipient and each sub-recipient, if any, certify that they are not excluded or disqualified from receiving federal funds by any federal department or agency. A completed federal form ED Form GCS-009, 6/88, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions" must be submitted to the Department of State prior to receiving disbursement.
4. The Supervisor must segregate state distributions for optical scan voting equipment in a separate account established to hold only such funds. **The account established for these funds must be in an interest bearing account.** Any funds remaining in the fund at the end of the fiscal year shall remain in the account to be used for the same purposes for subsequent years or until such funds are expended.
5. The Supervisor shall maintain separate accounting records for this funding.
6. The Supervisor shall provide a written report to the Department on or before December 31, 2007 detailing the actual expenditures by the Supervisor of the funds

provided under this Agreement. The report shall cover the period from the date of receipt of the funds by the Supervisor through September 30, 2007. The Supervisor shall subsequently provide such a report by December 31 of each and every year thereafter, covering the preceding period of October 1 through September 30, as long as any funds provided for under this Agreement remain and/or are expended.

7. Copies of any reports or other submissions required by paragraphs 3 and 6 of this Attachment shall be submitted by or on behalf of the Supervisor directly to:

*Department of State
Division of Elections
R.A. Gray Building
500 S. Bronough Street, Suite 316
Tallahassee, Florida 32399-0250*

State Resources Awarded to the Supervisor Pursuant to this Agreement Consist of the Following: N/A

Matching Resources for Federal Programs: N/A

Subject to section 215.97, Florida Statutes: N/A

Compliance Requirements applicable to State Resources Awarded Pursuant to this Agreement are as Follows: N/A

14

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone Number).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT B

DEPARTMENT OF STATE
DIVISION OF ELECTIONS
OPTICAL SCAN VOTING EQUIPMENT
FY 2007-08

MIAMI-DADE COUNTY

SUM CERTAIN: \$4,504,500.00

COUNTY	PRECINCTS 2006	COST PER OPTICAL SCAN*	TOTAL OPTICAL SCAN
Miami Dade**	780	\$5,775	\$4,504,500.00

For purchase of one of the following optical scan models:

ES&S (\$5,775)
DS 200

Diebold (\$6,635)
AccuVote - OS (Model D)

Sequoia (\$5,750)
Optech Insight Plus Optical Scanner

*This amount based on the assumption that a county will remain with current vendors.

**The original calculation for Miami-Dade County was based on 749 precincts as reported by the SOE's office. The difference in funds for optical scan machines (\$179,025) was subtracted from Miami-Dade's Ballot-on-Demand Grant.



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

MEMORANDUM

TO: Supervisors of Elections

FROM: Amy K. Turk
Director, Division of Elections

DATE: August 14, 2007

SUBJECT: HAVA Funds for Ballot-on-Demand Equipment

The 2007 Legislature appropriated funds to be distributed to counties listed in Section 11(b) of Chapter 2007-30, Laws of Florida, to assist with purchasing ballot-on-demand equipment.

Funds received pursuant to this agreement must be used solely to purchase ballot-on-demand equipment for use at early voting sites, including optical scan tabulators.

Once you are in receipt of these funds, they must be deposited in an **interest bearing** account until they are disbursed. The county must segregate state distributions for ballot-on-demand equipment in a separate account established to hold only such funds. Any funds remaining in the fund at the end of the fiscal year shall remain in the account to be used for the same purposes in subsequent years or until such funds are expended. The county shall maintain separate accounting records for this funding.

Enclosed are the following documents:

- Memorandum of Agreement for HAVA Funds for Ballot-on-Demand Equipment
- Attachment A, Compliance Requirements
- Attachment A-1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

Ballot-on-Demand Equipment
August 14, 2007
Page 2

- Attachment B, Funding Per County

Please return the executed documents to the Division of Elections. You will be provided a copy of the agreement upon execution by the Division.

If you have any questions, please let us know.

AKT/BL/jd

Enclosures

cc: County Governing Authority

MEMORANDUM OF AGREEMENT

HAVA FUNDS FOR BALLOT ON DEMAND EQUIPMENT

This agreement, effective as of the date fully executed, is between the State of Florida, Department of State, Division of Elections ("Department"), an agency of the State of Florida, the address of which is the R.A. Gray Building, 500 South Bronough Street, Room 316, Tallahassee, FL 32399-0250 and County Supervisor of Elections, The Honorable Lester Sola ("Supervisor"), as authorized representative of Miami-Dade County, the address of which is 2700 NW 87th Avenue, Miami, Florida 33172. The agreement governs the receipt and use of federal funds as specified herein.

I. Governing Law

Section 11 of Chapter 2007-30, Laws of Florida, provides for the disbursement of funds to be used to purchase ballot-on-demand equipment for use at early voting sites, including optical scan tabulators. From the funds appropriated from the Grants and Donations Trust Fund to the Department of State, the Department is authorized to distribute funds in the state fiscal year 2007-2008 to the county supervisors of elections as listed in Section 11(b) of Chapter 2007-30, Laws of Florida, to assist with purchasing ballot-on-demand equipment for use at early voting sites, including optical scan tabulators. Funding to support this appropriation is made available through section 251 of the Help America Vote Act of 2002 (HAVA) and the Catalog of Federal Domestic Assistance (CFDA) 90.401, Help America Vote Act Requirements Payments.

II. Restrictions

Supervisor must comply with the requirements for federal and/or state resources as provided in **Attachment A** which is incorporated by reference as if fully set forth herein. However, this Agreement shall not be fully executed nor funds disbursed until the county supervisor of elections first satisfies the requirements of paragraph 2 of **Attachment A**. As referenced in Attachment A, all funds must be placed in an interest bearing account until disbursed.

No county supervisor of elections shall use any funds received hereunder to support state or federal lobbying activities but this does not affect the right, or that of any other organization to petition Congress, or any other level of Government, through the use of other resources.

Any funds received by the Supervisor under this Agreement that are used for any unauthorized purpose shall be repaid to the Department.

III. Disbursement

The Department shall distribute to each eligible county supervisor of elections a sum certain as outlined further in **Attachment B**.

IV. Monitoring, Reporting, and Audits

The administration of resources awarded to the Supervisor is subject to audits and/or monitoring by the Department of State as described in this section.

A. Monitoring and Reporting

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, and Section 215.97, F.S., (see Part B "Audits") monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Supervisor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department.

In the event the Department determines that a limited scope audit of the Supervisor is appropriate, the Supervisor agrees to comply with any additional instructions provided by Department staff to the Supervisor regarding such audit. The Supervisor further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

Additionally, the Supervisor of Elections must comply with the reporting requirements of paragraph 6 in **Attachment A**. The Department shall closely monitor the Supervisors' annual expenditure reports to ensure that the Supervisors expend HAVA funds in accordance with approved plans and will require reimbursement for all expenditures not approved.

B. Audits

Part I: Federal Funds—This part is applicable if the Supervisor is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the Supervisor expends \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards in its fiscal year, the Supervisor must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. **Attachment A** indicates Federal resources awarded through the Department by this Agreement. In determining the Federal awards expended in its fiscal year, the Supervisor shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended shall be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Supervisor conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, shall meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the Supervisor shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

3. If the Supervisor expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Supervisor expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from Supervisor resources obtained from other than Federal entities).
4. *Additional guidance to state and federal monitoring and auditing requirements may be found at <http://www.eac.gov>; and <http://election.dos.state.fl.us/havaa/index.shtml>*

Part II: State Funds—This part is applicable if the Supervisor is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

In the event that the Supervisor expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such Supervisor (for fiscal years ending September 30, 2004 or thereafter), the Supervisor must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. **Attachment A** indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the Supervisor shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

In connection with the audit requirements addressed in Part II, paragraph 1, the Supervisor shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the Supervisor expends less than \$500,000 in state financial assistance in its fiscal year (for fiscal years ending September 30, 2004 or thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the Supervisor expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Supervisor's resources obtained from other than State entities).

Part III: Other Audit Requirements—Pursuant to Section 215.97(8), Florida Statutes, the Department may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the Department must arrange for funding the full cost of such additional audits.

Part IV: Report Submission—

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the Supervisor directly to each of the following:

*Department of State
Division of Elections
R.A. Gray Building
500 S. Bronough Street, Ste 316
Tallahassee, Florida 32399-0250*

*Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, Indiana 47132*

Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. Pursuant to Section .320 (f), OMB Circular A-133, as revised, the Supervisor shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letter issued by the auditor, to the Department at the following address:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the Supervisor directly to each of the following:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

*Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450*

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the Supervisor directly to:

*Department of State
Office of Inspector General
Clifton Building, Suite 320
2661 Executive Center Circle
Tallahassee, Florida 32399-0250*

5. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely

in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Supervisors, when submitting financial reporting packages to the Department of State for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Supervisor in correspondence accompanying the reporting package.

Part V: Record Retention—The Supervisor shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of five years from the date the audit report is issued, and shall allow the Department or its designee, CFO, or Auditor General access to such records upon request. The Supervisor shall ensure that audit working papers are made available to the Department or its designee, CFO, or Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

V. Entirety of the Agreement

All terms and conditions of this agreement are fully set forth in this document and shall be governed by the laws of the State of Florida regardless of any conflict of laws provisions. In any proceeding or action brought under this section, the parties agree that the prevailing party will be entitled to its reasonable attorney's fees from the other party. The parties agree that proper venue will be in Leon County, Florida.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

Supervisor of Elections, authorized
representative for Miami-Dade County

Department of State
Division of Elections:

By: _____

By: _____

Typed name and title

Typed name and title

Witness

Witness

Date

Date

ATTACHMENT A

Federal Program: Federal Help America Vote Act--Catalog of Federal Domestic Assistance (CFDA) § 90.401 Help America Vote Act Requirements Payments for the amount specified in Attachment B.

Compliance Requirements Applicable to the Federal Resources Awarded Pursuant to this Agreement are as Follows:

1. Funds received pursuant to this Agreement must be expended solely to purchase ballot-on-demand equipment for use at early voting sites, including optical scan tabulators.
2. No county supervisor of elections shall receive funds pursuant to this Agreement until he or she:
 - Completes and returns the required "County Certification (ss.10-11, Chapter 2007-30, Laws of Florida)" form.
 - Completes and submits ED Form GCAS-009 (6/88), entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions." Such form is attached hereto as **Attachment A-1**.
 - Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, prohibits the disbursement of federal funds to the intended recipient of such funds or to any sub-recipient thereunder unless such recipient or sub-recipient certifies that the recipient or sub-recipient is not excluded or disqualified from receiving federal funds by any federal department or agency. A completed federal form ED Form GCS-009, 6/88, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions" must be submitted to the Department of State prior to receiving disbursement.
3. The Supervisor must segregate state distributions for ballot-on-demand equipment, including optical scan tabulators, in a separate account established to hold only such funds. **The account established for these funds must be in an interest bearing account.** Any funds remaining in the fund at the end of the fiscal year shall remain in the account to be used for the same purposes for subsequent years or until such funds are expended.
4. The Supervisor shall maintain separate accounting records for this funding.
5. The Supervisor shall provide a written report to the Department on or before December 31, 2007 detailing the actual expenditures by the Supervisor of the funds provided under this Agreement. The report shall cover the period from the date of receipt of the funds by the Supervisor through September 30, 2007. The Supervisor

shall subsequently provide such a report by December 31 of each and every year thereafter, covering the preceding period of October 1 through September 30, as long as any funds provided for under this Agreement remain and/or are expended.

6. Copies of any reports or other submissions required by paragraphs 2 and 5 of this Attachment shall be submitted by or on behalf of the Supervisor directly to:

*Department of State
Division of Elections
R.A. Gray Building
500 S. Bronough Street, Suite 316
Tallahassee, Florida 32399-0250*

State Resources Awarded to the Supervisor Pursuant to this Agreement Consist of the Following: N/A

Matching Resources for Federal Programs: N/A

Subject to section 215.97, Florida Statutes: N/A

Compliance Requirements applicable to State Resources Awarded Pursuant to this Agreement are as Follows: N/A

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone Number).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT B

DEPARTMENT OF STATE
DIVISION OF ELECTIONS
BALLOT ON DEMAND
FY 2007-08

MIAMI-DADE COUNTY

SUM CERTAIN: \$506,827.56

COUNTY	EARLY VOTING SITES	COST PER OPTICAL SCAN*	TOTAL EARLY VOTING OPTICAL SCAN	BALLOT ON DEMAND**	TOTAL PER COUNTY
Miami-Dade	20	\$5,775	\$115,500.00	\$391,327.56	\$506,827.56

For purchase of one of the following optical scan models:

ES&S (\$5,775)
DS 200

Diebold (\$6,635)
AccuVote - OS (Model D)

Sequoia (\$5,750)
Optech Insight Plus Optical Scanner

*This amount based on the assumption that a county will remain with current vendors.

**Amount based on number of registered voters in the 2006 General Election at approximately \$0.52 each.